

ORIGINAL

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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

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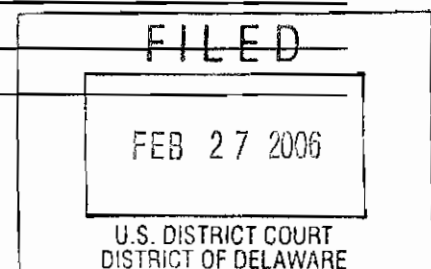
United States District Court		District <u>Delaware</u>
Name (under which you were convicted): <u>Charles F. Cardone</u>		Docket or Case No.:
Place of Confinement: <u>DCC, Smyrna, DE</u>		Prisoner No.: <u>098159</u>
Petitioner (include the name under which you were convicted) <u>Charles F. Cardone</u>		Respondent (authorized person having custody of petitioner) <u>Warden Thomas Carroll, DCC</u>
The Attorney General of the State of		<u>Delaware - Carl Danberg</u>

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: The Superior Court of Sussex County, Delaware
(b) Criminal docket or case number (if you know): 0409005091A and 0201021864
- (a) Date of the judgment of conviction (if you know): March 28, 2005
(b) Date of sentencing: July 29, 2005
- Length of sentence: 14 years to include VOP sentences
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case: 1- Aggravated menacing; 2- Resisting Arrest; 3- Trespass 3rd°
- (a) What was your plea? (Check one)

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>

 (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?



(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☒ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Delaware Supreme Court

(b) Docket or case number (if you know): _____

(c) Result: Pending

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: When my court appointed attny came to DCC to discuss grounds for direct appeal, we discussed several claims of error to which he objected to at March 28, 05, trial... when he sent me copies of direct appeal, he submitted to Supreme Court, he raised an issue re. refusal of Graves to allow me look at my PSI prior to Graves sentencing of me.

(g) Did you seek further review by a higher state court? Yes ☐ No ☒

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: I am filing this habeas to validate to Del. District Court my various and numerous claims of error I wish to use in support of this habeas that my attny refused to submit to the courts in my behalf.

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result:

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Gussey County Superior Ct and Del. Supreme Ct.

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): various dates

(4) Nature of the proceeding: various certified and registered letters

(5) Grounds raised: to Judge Graves and Chief Justice Steele.

'IAC': refusal of my atty and court reporters to provide stipulated transcripts at my written requests; Prosecutorial Misconduct, Judicial prejudice, bias, incongruous, incompetent behavior.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☒ No ☒

(7) Result: Denied by Graves

(8) Date of result (if you know): prior to July 28, 2005, hearings.

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(3) Third petition: Yes ☐ No ☒

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

I had a court appointed lawyer who did not, would not vigorously defend me, nor would he consider claims of error. I tried to point out using case laws to support my claims.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Violations of my due process rights...

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

After my repeated requests for transcripts of all proceedings of my case so I may affect an appeal were not carried out by my court appointed attorney, my due process rights were, and are, being violated.

(b) If you did not exhaust your state remedies on Ground One, explain why: I, as the defend- ant, was told by numerous state personnel that they could not respond to my numerous requests because I am represented by counsel.

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: I did not (was not permitted to) raise numerous issues because I am represented by a counsel.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Certified & Registered Letters

Name and location of the court where the motion or petition was filed: I have copies of and postal service receipts of letters and correspondence to various lawyers, judges, Dept of Justice, etc. expressing my wishes to present issues in my direct appeal only to be denied my due process rights.

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Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): Letters from Sussex County Superior Ct. Judges, Supreme Court (State) clerks docking my letters and sending them to my attorney of record.

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Greaves Superior Ct., Georgetown, Myron Steele, State Supreme Court

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): I have denials of motions and letters submitted to officers of the Court.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: my court appointed attny refused to effectively represent me and abide by Delaware Rules of Professional Responsibility

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

If I am granted review, I will provide documented complaints to CDC, Court on the Judiciary, various docket letters by me defendant

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: _____

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- (b) If you did not exhaust your state remedies on Ground Three, explain why: _____

- (c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: formal complaints to ODC & Court on the Judiciary
 Name and location of the court where the motion or petition was filed: Myron T. Steele

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: this Habeas

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Present Habeas

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: *Not being versed in the law, that*

is an ambiguous question

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. Direct Appeal in Del. Supreme Ct.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Public Defender, John Brady

(b) At arraignment and plea: E. Stephen Callaway

(c) At trial: Michael R. Abram

(d) At sentencing: Michael R. Abram

(e) On appeal: Michael R. Abram - Direct appeal - Rule 26

(f) In any post-conviction proceeding: Pro SE

(g) On appeal from any ruling against you in a post-conviction proceeding: Pro-Se

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☒ No ☐

~~EARL DAN BERG~~
~~Brady's replacement~~

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(a) If so, give name and location of court that imposed the other sentence you will serve in the future: VOP back up time (14 years at Level 5)

(b) Give the date the other sentence was imposed: July 29, 05

(c) Give the length of the other sentence: 9 years (VOP) back up time

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition. * Judgement of conviction was July 28, 05

Michael R. Abram (Cardone's attorney of record appointed to represent me re case ID NOS. 0409 005091A and 0201021864....

My attorney filed a direct appeal to the Supreme Court (DE) pursuant to Rule 26... in support of the appeal he filed he did not use any of the claims of error we discussed prior to his filing of this appeal in his visit to D.C. to discuss our appeal. Furthermore, we had a hearing in front of Graves in which Graves denied Abram's motion to Withdraw as my attorney prior to Abram filing his direct appeal.... Abram has continually violated his professional rules of conduct and rules of responsibility by; 1) from Dec. 2004, the time Abram was officially appointed as my counsel to the date of my sentencing, July 28, 2005, Abram and I talked, face to face about our case for approx. 20 minutes; 2) Mr. Abram filed "0" (ZERO) pre-trial motions in his defense of me prior to our trial of Mar. 28, 05; 3) My documented formal complaints to the DC re Abram's IAC and formal complaints in re Graves to the Court on the Judiciary, which were dismissed made it clear to me my only avenue for relief is in Federal, not state, courts.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: Reversal of Jury's
guilty verdict, dismissal of all my charges, my immediate release
from custody, suspension of Graves, Paula Ryan, DAG, Michael
 or any other relief to which petitioner may be entitled. A. Brown, E. Stephen Callaway, P.D.,
Melanie Withers, DAG, etc.

Pro Se
 Signature of Attorney (if any)
Charles F. Cardone, Pro Se

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
 and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on

Feb. 23, 2006 (month, date, year).

Executed (signed) on Feb. 23, 2006 (date).

Charles F. Cardone
 Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

I/M Charles F. Cardone
SBI# 098159 UNIT Bldg 20C84

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SMYRNA, DELAWARE 19977

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MAIL

* Office of the Clerk *

United States District Court

844 N. King St.

FOLKBOX 18

Wilm. DE

19801-3570

U.S.M.S.
X-RAY

